

<b>DENNIS ROMERO, dba A-1 FIREWOOD,</b>	)	<b>AGBCA Nos. 2005-133-3</b>
	)	<b>2005-134-3</b>
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Randy E. Lovato, Esquire	)	
8100 Rancho Sueno Court NW	)	
Albuquerque, New Mexico 87120	)	
	)	
<b>Representing the Government:</b>	)	
	)	
Patricia Leigh Disert, Esquire	)	
Office of the General Counsel	)	
U. S. Department of Agriculture	)	
P. O. 586	)	
Albuquerque, New Mexico 87103-0586	)	

**DECISION OF THE BOARD OF CONTRACT APPEALS**

**July 6, 2005**

**BEFORE POLLACK and WESTBROOK, Administrative Judges.**

**Opinion for the Board by Administrative Judge POLLACK.**

These appeals arise out of Contract No. 001077, Brooks West Firewood Sale, and Contract No. 001069, Corona Firewood Sale between Dennis Romero, d/b/a A-1 Firewood, of Albuquerque, New Mexico, and the U. S. Department of Agriculture, Forest Service (FS), Mt. Taylor Ranger District, Grants, New Mexico. Both contracts carried initial completion dates of September 27, 2004, which were subsequently extended to November 6, 2004, due to suspensions of Appellant's work. The FS notified Appellant by letter of October 28, 2004, that the contracts would terminate on November 6, 2004. On November 6, Appellant had not fully completed the contract work. Moreover, as of November 6, Appellant had approximately 15 cords of firewood loaded on a semi-trailer within the work site. The FS refused to allow Appellant to remove that firewood or to continue working on the sales, but did state it would allow removal of the trailer, once it was unloaded. By letter dated December 17, 2004, Appellant submitted a claim through its attorney. By final decision of February 17, 2005, the Contracting Officer denied the claim. Appellant filed a timely appeal which the Board received on March 3, 2005. Appellant in its appeal asserted that it had substantially completed the contracts and requested a contract adjustment; asked that it be permitted to remove the trailer along with the timber loaded on it; and requested permission to remove the remaining

uncut timber on the contracts. Appellant elected the Board's accelerated procedure.

The Board has jurisdiction to decide the appeals pursuant to the Contract Disputes Act of 1978, (CDA), 41 U.S.C. §§ 601-613, as amended.

After docketing the appeals, the Board held a telephone conference on April 5, 2005, with counsel for the parties. The Board and parties reviewed the facts and the Board urged the parties to attempt to settle. The parties were unsuccessful. Accordingly, the Board set a schedule for further submission of documents and for setting a hearing, if necessary. On April 6, 2005, Appellant filed a Motion to Dismiss and Request for Permission to Recover Appellant's Business and Personal Property From Respondent. On April 8, 2005, the Board received a letter from counsel for the FS stating that the roads to the area were at that time impassable due to snow and the FS would notify counsel for Appellant when the roads were again passable and the gate unlocked. The FS stated that once Appellant could secure road and site access, Appellant could retrieve its trailer.

By letter of April 13, 2005, the Board responded to the two filings, pointing out that it did not have the authority to direct the FS to release the trailer. Nevertheless, the Board directed the FS to advise it of the status of removal, to provide a target date for removal and thereafter report to the Board every 10 days until the gate was open and the trailer removed. The Board stated it would act on the Motion, once the trailer was made available to the Appellant. The Board was informed on May 11, that the Appellant had picked up the trailer.

### **DECISION**

Pursuant to the Motion, the appeal is dismissed.

---

**HOWARD A. POLLACK**

Administrative Judge

**Concurring:**

---

**ANNE W. WESTBROOK**

Administrative Judge

**Issued at Washington, D.C.**

**July 6, 2005**